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WILLIAM H. THOMAS (ISB 3154)  
DANIEL E. WILLIAMS (ISB 3920)  
CHRISTOPHER F. HUNTLEY (ISB 6056)  
HUNTLEY PARK, LLP  
250 S. Fifth St., Suite 660  
P.O. Box 2188  
Boise, ID 83701-2188  
Telephone: (208) 345-7800  
Fax: (208) 345-7894  
[wmthomas@huntleypark.com](mailto:wmthomas@huntleypark.com)  
[danw@huntleypark.com](mailto:danw@huntleypark.com)  
[chuntley@huntleypark.com](mailto:chuntley@huntleypark.com)

Attorneys for Plaintiffs

U.S. COURTS  
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REC'D  
CLERK CAMERON S. BURKE  
IDAHO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL )  
B. HINCKLEY, JACQUELINE T. )  
HLADUN, MARILYN J. CRAIG, )  
JEFFERY P. CLEVENGER, and )  
TIMOTHY C. KAUFMANN, )  
individually and on behalf )  
of those similarly situated, )

Plaintiffs, )

vs. )

MICRON ELECTRONICS, INC., a )  
Minnesota corporation, )

Defendant. )

Case No. CIV 01-0244-S-BLW

**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S MOTION TO  
STRIKE CONSENTS AND  
DISMISS CLAIMANTS**

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS, P. 1

206

Plaintiff's respond to Defendant's Motion to Strike Consents and Dismiss Claimants (Docket # 189) ("Motion") as follows:

Most of the individuals whom Defendant Micron Electronics, Inc. ("MEI") wishes to dismiss from this collective action are non-controversial. Some individuals indicated a desire to drop out of the lawsuit rather than be deposed or were otherwise uncooperative in the prosecution of their claims. Plaintiffs submit, however, that the claim of one of the individuals identified in MEI's Motion, Julie Gardner, should not be dismissed. Plaintiffs address the various categories of individuals identified by MEI in its Motion below.

1. **Individuals Opting Out.** As set forth in MEI's supporting Memorandum,<sup>1</sup> the individuals identified indicated that they wished to drop out of the lawsuit.

2. **Individuals Who Failed to Appear for Scheduled Depositions.** The two individuals identified in MEI's supporting Memorandum, Dennis Christensen and Mark McKenzie, failed to appear at their depositions without notifying Plaintiffs' counsel that they would not appear.

3. **Individuals Who Have Not Cooperated in the Litigation.** MEI claims that both Julie Gardner and Kurt Swanson have refused to reschedule a time to be deposed. While MEI is correct as to Kurt Swanson, MEI is incorrect as it pertains to Julie Gardner. Julie Gardner has consistently voiced willingness to appear at deposition at a mutually convenient time.<sup>2</sup> MEI

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<sup>1</sup> Memorandum in Support of Defendant's Motion to Strike Consents and Dismiss Claimants (Docket # 190), p. 3 (cited hereafter as "MEI's supporting Memorandum" by page number).

<sup>2</sup> See, Affidavit of Glenys McPherson Re: Julie Gardner, filed concurrently.

implicitly concedes such fact, in that it has rescheduled Ms. Gardner for deposition on July 20, 2004, pursuant to its Notice of Deposition of June 23, 2004. Hence, Plaintiffs object to the dismissal of the claims of Julie Gardner and the striking of her Consent.

**4. Individuals Who Are Not Properly in the Conditionally Certified Class.**

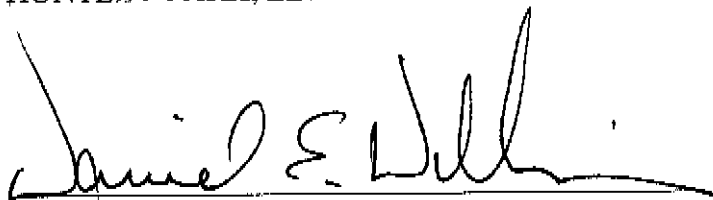
Plaintiffs acknowledge that the individuals listed by MEI in its supporting Memorandum (pp. 3-4) are not properly part of the class certified by the Court.

**CONCLUSION**

Accordingly, Plaintiffs object to MEI's Motion to Strike Consents and Dismiss Claimants as it pertains to Julie Gardner.

DATED this 7<sup>th</sup> day of July, 2004.

HUNTLEY PARK, LLP

A handwritten signature in black ink, appearing to read "Daniel E. Williams", written over a horizontal line.

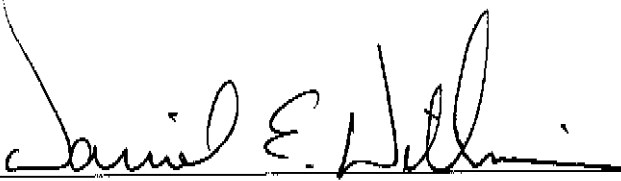
Daniel E. Williams  
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of July, 2004, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

Kim J. Dockstader  
Gregory C. Tollefson  
STOEL RIVES LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702-5958

       Via Hand Delivery  
  ✓   Via Facsimile 389-9040  
       Via U. S. Mail

  
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Daniel E. Williams